

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

HANS A. QUAACK, ATTILIO PO
and KARL LEIBINGER, on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM
(formerly known as ARTESIA BANKING
CORP., SA),

Defendants.

No.: 03-CV-11566 (PBS)

STONINGTON PARTNERS, INC., a Delaware
Corporation, STONINGTON CAPITAL
APPRECIATION 1994 FUND L.P., a Delaware
Partnership and STONINGTON HOLDINGS,
L.L.C., a Delaware limited liability company,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM
(formerly known as ARTESIA BANKING
CORP., SA),

Defendants.

No.: 04-CV-10411 (PBS)

GARY B. FILLER and LAWRENCE PERLMAN,
Trustees of the TRA Rights Trust,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM
(formerly known as ARTESIA BANKING
CORP., SA),

Defendants.

No.: 04-CV-10477 (PBS)

JANET BAKER and JAMES BAKER,
JKBAKER LLC and JMBAKER LLC,

Plaintiffs,

v.

DEXIA, S.A. and DEXIA BANK BELGIUM
(formerly known as ARTESIA BANKING

CORP., SA),

Defendants.

No.: 04-CV-10501 (PBS)

**PLAINTIFFS' UNOPPOSED MOTION
FOR LEAVE TO FILE MOTION PAPERS UNDER SEAL**

Class plaintiffs together with plaintiffs Stonington Partners, Inc., Stonington Capital Appreciation 1994 Fund L.P. and Stonington Holdings, L.L.C., Gary B. Filler and Lawrence Perlman, Trustees of the TRA Rights Trust, and Janet Baker, James Baker, JKBaker LLC and JMBaker LLC (collectively the "Plaintiffs") hereby jointly move, pursuant to Massachusetts Local Rule 7.2, for orders authorizing the filing under seal, in each of the above-captioned actions, of: (1) Memorandum of Law in Support of Plaintiffs' Joint Motion to Compel Depositions of Dexia Bank Belgium Through Piet Cordonnier, Bart Ferrand, and Peter Rabaey dated November 4, 2005 (the "Memorandum of Law"); and (2) Declaration of Susan M. Davies in Support of Plaintiffs' Joint Motion to Compel Depositions of Dexia Bank Belgium Through Piet Cordonnier, Bart Ferrand, and Peter Rabaey executed on November 4, 2005, together with the exhibits thereto (the "Davies Declaration").

In support of this unopposed motion, Plaintiffs state as follows.

1. On May 31, 2005, the Court entered an Order Governing the Treatment of Confidential Information in each of the above-captioned actions (the “Confidentiality Order”). A true and correct copy of the Confidentiality Order is annexed as **Exhibit A** to the accompanying Declaration of Patrick T. Egan executed November 4, 2005. Under the terms of the Confidentiality Order, memoranda and declarations containing or disclosing discovery materials that the producing party has designated as “Confidential Information” must be filed with the Court under seal. *See* Egan Dec. **Ex. E** at ¶10.

2. On November 4, 2005, Plaintiffs filed Plaintiffs’ Joint Motion to Compel Depositions of Dexia Bank Belgium Through Piet Cordonnier, Bart Ferrand, and Peter Rabaey (the “Motion to Compel”) (*see* Egan Dec. **Ex. C**), in response to the refusal by defendant Dexia Bank Belgium to make these three individuals available for deposition in Brussels, Belgium pursuant to a Plaintiffs’ First Omnibus Notice of Depositions of Defendant Dexia Bank Belgium served on September 15, 2005. *See* Egan Dec. **Exs. A, B**.

3. On November 4, 2005, Plaintiffs also served by hand upon counsel for defendant Dexia Bank Belgium, Jeff E. Butler, Esq. of Clifford Chance US LLP, New York, New York, copies of the Memorandum of Law and the Davies Declaration, both in support of the Motion to Compel. *See* Egan Dec. at ¶ 6 and **Ex. D**.

4. Neither the Memorandum of Law nor the Davies Declaration has been filed with the Court because both documents contain information designated by Dexia Bank Belgium to be confidential under the terms of the Confidentiality Order. *See* Egan Dec. ¶ 7.

5. Dexia Bank Belgium's stated reason for refusing to produce Messrs. Cordonnier, Ferrand, and Rabaey for deposition is that these individuals are not officers, directors, or managing agents of Dexia Bank Belgium, and are not willing to appear voluntarily for deposition. *See* Egan Dec. at ¶ 4 and **Ex. B**.

6. Under the applicable case law, "the question of whether a particular person is a 'managing agent' is to be answered pragmatically on an ad hoc basis." CHARLES A. WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, 8A FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D §2103 at 39 (1994). Accordingly, in support of the Motion to Compel, Plaintiffs seek to present evidence concerning, among other things, the functions, powers and duties of each of the potential deponents with respect to the subject-matter of the litigation. *See, e.g., United States v. The Dorothy McAllister*, 24 F.R.D. 316, 317 (S.D.N.Y. 1959).

7. Much of the information upon which Plaintiffs must rely to establish these facts is information that Dexia Bank Belgium has produced in discovery subject to a "Confidential Information" designation. *See* Egan Dec. ¶ 7. As a result, in order to discharge their burden of establishing the status of Messrs. Cordonnier, Ferrand, and Rabaey as managing agents of Dexia Bank Belgium, Plaintiffs must present Dexia Bank Belgium's designated "Confidential Information" to the Court. Under the terms of the Confidentiality Order, the Memorandum of Law and Davies Declaration, which present that information, must be filed under seal. *See* Egan Dec. **Ex. E** at ¶10.

**Certification Under Fed. R. Civ. P. 37(a)(2)(b),
and Local Rules 7.1(a)(2) and 37.1(b)**

1. Pursuant to Local Rules 7.1(a)(2), undersigned counsel hereby certify that on October 14, 2005 Susan M. Davies, Esq. of the Gregory P. Joseph Law Offices LLC, acting on behalf of all Plaintiffs, conferred by telephone with James B. Weidner, Esq. of Clifford Chance US LLP, counsel for Dexia Bank Belgium, concerning the filing of the instant motion and the Motion to Compel. Mr. Weidner advised Ms. Davies that Dexia Bank Belgium would not oppose the instant motion seeking to file papers in support of the Motion to Compel under seal.

WHEREFORE, Plaintiffs respectfully request that this Court enter orders:

- (A) authorizing the filing under seal, in each of the above-captioned actions, of:
 - (1) the Memorandum of Law in Support of Plaintiffs' Joint Motion to Compel Depositions of Dexia Bank Belgium Through Piet Cordonnier, Bart Ferrand, and Peter Rabaey dated November 4, 2005; and (2) the Declaration of Susan M. Davies in Support of Plaintiffs' Joint Motion to Compel Depositions of Dexia Bank Belgium Through Piet Cordonnier, Bart Ferrand, and Peter Rabaey executed on November 4, 2005; and
- (B) for such other and further relief as the Court deems just and proper.

Dated: November 4, 2005

Respectfully submitted,

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